

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

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**TENTATIVE
ORDER NO. R9-2015-0100**

**AN ORDER AMENDING ORDER NO. R9-2013-0001, NPDES NO. CAS010266,
AS AMENDED BY ORDER NO. R9-2015-0001
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT
AND WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM THE
MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) DRAINING THE
WATERSHEDS WITHIN THE SAN DIEGO REGION**

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), finds that:

ENROLLMENT OF RIVERSIDE COUNTY COPERMITTEES

- 1. Enrollment Process.** On May 8, 2013, the San Diego Water Board adopted Order No. R9-2013-0001, NPDES No. CAS019266, *National Pollutant Discharge Elimination System Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region* (Order No. R9-2013-0001, or Regional MS4 Permit). Provision F.5 of that Order (as amended by Order No. R9-2015-0001) outlines a process to designate (enroll) the County of Riverside, the Riverside County Cities of Murrieta, Temecula, and Wildomar, and the Riverside County Flood Control and Water Conservation District as Copermittees under Order No. R9-2013-0001, responsible for compliance with the terms and the conditions of the Regional MS4 Permit. Provision F.5 provides that prior to such enrollment, the San Diego Water Board must first review and consider a Report of Waste Discharge (ROWD) submitted by the Riverside County Copermittees under their current MS4 Permit, Order No. R9-2010-0016, to determine whether the Copermittees should be enrolled under Order No. R9-2013-0001, and what changes to Order No. R9-2013-0001 proposed in the ROWD are appropriate.
- 2. Report of Waste Discharge.** By letter dated May 8, 2015, the Riverside County Copermittees jointly submitted a ROWD in application for the reissuance of waste discharge requirements, pursuant to the requirements of section K.2.c of Order No. R9-2010-0016. The San Diego Water Board reviewed the ROWD and determined it is complete.

3. **Riverside County Copermittees Enrollment.** After consideration of the Riverside County Copermittees' ROWD and changes needed to Order No. R9-2013-0001, the San Diego Water Board determined that the County of Riverside, the Cities of Murrieta, Temecula, and Wildomar, and the Riverside County Flood Control and Water Conservation District should be enrolled as Copermittees under Order No. R9-2013-0001 and be responsible for compliance with the terms and the conditions of the Regional MS4 Permit. Enrolling the Riverside County Copermittees into Order No. R9-2013-0001 will provide regulatory consistency in the implementation of MS4 permit requirements throughout the San Diego Region, improve communication and coordination among Copermittees within watersheds crossing multiple jurisdictions, and maximize efficiency and economy of resources for the San Diego Water Board achieved through the redirection of staff permitting resources to better advance the storm water program. Enrollment of the Cities of Murrieta and Wildomar is subject to a California Water Code section 13228 agreement as set forth in the findings of this Order.

DESIGNATION OF A REGIONAL WATER BOARD

4. **Regional Water Board Designation.** The Cities of Menifee, Murrieta, and Wildomar are located partially within the jurisdictions of both the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board) and the San Diego Water Board. California Water Code section 13228 provides a way to streamline the regulation of entities whose jurisdictions straddle the border of two or more Regional Water Boards.

As allowed by California Water Code section 13228, during the proceedings for Order No. R9-2010-0016, the Fourth Term Riverside County MS4 Permit, written requests for designation of a single Regional Water Board to regulate matters pertaining to Phase I MS4 discharges were submitted to the San Diego Water Board and Santa Ana Water Board by the City of Murrieta by letter dated July 20, 2010, the City of Wildomar by letter dated July 21, 2010, and the City of Menifee by letter dated July 22, 2010. The Cities of Murrieta and Wildomar requested designation of the San Diego Water Board, and the City of Menifee requested designation of the Santa Ana Water Board.

As authorized by California Water Code section 13228 and pursuant to written agreements dated September 28, 2010 between the San Diego Water Board and the Santa Ana Water Board, the San Diego Water Board is designated under Order No. R9-2010-0016 to regulate Phase I MS4s within the entire jurisdictional area of the Cities of Murrieta and Wildomar, including those areas of each City located within the Santa Ana Water Board's geographic jurisdiction. The Santa Ana Water Board is designated under Order No. R8-2010-0033 to regulate the Phase I MS4s within the entire jurisdictional area of the City of Menifee, including those areas of the City located within the San Diego Water Board's geographic jurisdiction. Written requests to continue these Regional Water Board designations were submitted to the San Diego Water Board and Santa Ana Water Board by the City of Murrieta by

letter dated June 22, 2015, the City of Wildomar by letter dated June 23, 2015, and the City of Menifee by letter dated June 25, 2015.

5. **Factual Considerations.** The Santa Ana Water Board and San Diego Water Board establish generally consistent requirements for MS4 discharges to meet the technology-based standard of reducing pollutants in the discharge to the maximum extent practicable (MEP), a related iterative process to ensure MS4 discharges meet receiving water quality standards, and for non-storm water discharges to be effectively prohibited from entering the MS4. However due to the unique nature of watersheds and water quality issues in the San Diego Region and Santa Ana Region, MS4 permit requirements between the two Regional Water Boards may also vary to address region specific pollutant discharges and watershed conditions. The Cities of Menifee, Murrieta, and Wildomar report that management and implementation of municipal programs to comply with two different MS4 permits creates a significant administrative and financial burden that is not contributing to greater overall water quality improvements in either region.
6. **Regional Water Board Agreement.** The San Diego Water Board and the Santa Ana Water Board entered into an agreement dated [Month][Day], 2015 to:
 - a. Continue designation of the San Diego Water Board to regulate Phase I MS4 discharges within the entire jurisdictional area of the Cities of Murrieta and Wildomar, including those areas of each City located within the Santa Ana Region upon the effective date of Order R9-2015-0100, *and*
 - b. Continue designation of the San Ana Water Board to regulate Phase I MS4 discharges within the entire jurisdictional area of the City of Menifee, including those areas of the City located within the San Diego Region, under Order No. R8-2010-0033 (NPDES No. CAS618030) as it may be amended or reissued upon the effective date of Order No. R9-2015-0100.
7. **Periodic Review of Regional Water Board Agreement.** The basis supporting the Cities of Menifee, Murrieta, and Wildomar requests to designate a specific Regional Water Board for regulatory oversight of MS4 discharges may change under future conditions and circumstances. Therefore the San Diego Water Board and Santa Ana Water Board will periodically review the effectiveness of the agreement during each MS4 permit reissuance. Based on this periodic review the San Diego Water Board may terminate the agreement with the Santa Ana Water Board or otherwise modify the agreement subject to the approval of the Santa Ana Water Board.

AMENDMENTS TO ORDER NO. R9-2013-0001

8. **Effect of this Order.** Order No. R9-2013-0001 is not being reopened for any other purpose than the amendments contained herein. Except as contradicted or superseded by the findings and directives set forth in this Order, all of the previous findings and directives of Order No. R9-2013-0001 (as amended by Order No. R9-2015-0001) shall remain in full force and effect.

9. **Enroll Riverside County Copermittees.** This Order amends Order No. R9-2013-0001 to incorporate the County of Riverside, the Riverside County Cities of Murrieta, Temecula, and Wildomar, and the Riverside County Flood Control and Water Conservation District as Copermittees responsible for compliance with the terms and the conditions of Order No. R9-2013-0001, as amended by Order No. R9-2015-0001 and this Order.
10. **Alternative Compliance Pathway for Prohibitions and Limitations.** The San Diego County, Orange County, and Riverside County Copermittees have asserted that the prohibitions and limitations under Provision A of Order No. R9-2013-0001 may result in many years of noncompliance because years of technical efforts may ultimately be required to achieve compliance with the prohibitions and limitations, especially for wet weather discharges.

The San Diego Water Board considered the incorporation of an alternative pathway to compliance during the adoption proceedings for Order No. R9-2013-0001 in May 2013, but chose not to include it at that time. During the proceedings for Order No. R9-2015-0001, amending Order No. R9-2013-0001 to extend coverage of the Regional MS4 Permit to the Orange County Copermittees and as reflected in Order No. R9-2015-0001, the San Diego Water Board committed to considering the incorporation of a well-defined, transparent, and finite alternative pathway to compliance in Order No. R9-2013-0001 during the MS4 permit reissuance proceedings for the Riverside County Copermittees.

On June 16, 2015, the State Water Resources Control Board (State Water Board) adopted Order WQ 2015-0075, *In the Matter of Review of Order No. R4-2012-0175, NPDES Permit No. CAS004001, Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges within the Coastal Watersheds of Los Angeles County, Except Those Discharges Originating from the City of Long Beach MS4*, which directs all Regional Water Boards to consider a watershed-based planning and implementation approach to compliance with receiving water limitations when issuing Phase I MS4 permits going forward. Consistent with the principles set forth in Order WQ 2015-0075, this Order amends Order No. R9-2013-0001 to incorporate an alternative compliance pathway that allows a Copermittee to utilize the watershed-based Water Quality Improvement Plan to be deemed in compliance with the requirements of Provisions A.1.a, A.1.c, A.1.d, A.2.a, and A.3.b which are included in the prohibitions and limitations under Provision A of the Regional MS4 Permit.

This Order amends the Fact Sheet of Order No. R9-2013-0001, Attachment F, section VII.E, Antidegradation Policy, to provide an expanded analysis consistent with the principles set forth in State Water Board Order WQ 2015-0075, demonstrating why the incorporation of an alternative compliance pathway for prohibitions and limitations in Order No. R9-2013-0001 complies with federal and state antidegradation policies. This Order also amends the Fact Sheet of Order No. R9-2013-0001, Attachment F, section VII.E, Anti-Backsliding Requirements, with an expanded analysis consistent with State Water Board Order WQ 2015-0075

demonstrating that the anti-backsliding requirements of the Clean Water Act and the federal regulations do not foreclose the incorporation of an alternative compliance pathway into Order No. R9-2013-0001.

- 11. Update to Non-Storm Water Discharges.** Since Order No. R9-2013-0001 was adopted, the State Water Board adopted Order 2014-0194-DWQ (*Statewide National Pollutant Discharge Elimination System (NPDES) Permit for Drinking Water System Discharges to Waters of the United States*) and the San Diego Water Board adopted Order No. R9-2015-0013 (*General Waste Discharge Requirements for Groundwater Extraction Discharges to Surface Waters within the San Diego Region*). These orders are NPDES permits regulating non-storm water discharges that may be discharged to the Copermittees' MS4s. This Order amends Order No. R9-2013-0001 to incorporate State Water Board Order 2014-0194-DWQ and San Diego Water Board Order No. R9-2015-0013 into the requirements for addressing non-storm water discharges.
- 12. Priority Development Project Definition Consistency.** The Fact Sheet of the Regional MS4 Permit as modified by Order No. R9-2015-0001, describes on Page F-98 the San Diego Water Board's intent that the Priority Development Project categories in Provision E.3.b.(1) be consistent with the categories in the Riverside County MS4 Permit (Order No. R9-2010-0016) and the Orange County MS4 Permit (Order No. R9-2009-0002). The San Diego Water Board's intention reflected in the Fact Sheet was not explicitly incorporated in some of the Priority Development Project categories described in Provision E.3.b.(1) and this Order amends the provision with clarifying language to better describe these categories consistent with the Fact Sheet. The Order also has been amended to include the requirements for updating the BMP Design Manual as a result of the corrections to the Priority Development Project categories in Provision E.3.b.(1).
- 13. Definition of Prior Lawful Approval.** During the proceedings for Order No. R9-2015-0001, amending Order No. R9-2013-0001 to extend coverage of the Regional MS4 Permit to the Orange County Copermittees, the land development community asserted that the lack of a definition for the term "prior lawful approval" in the Regional MS4 Permit had created significant uncertainty for the San Diego County Copermittees, the land development community, and the general public about when the development planning requirements are applicable. The San Diego Water Board committed to considering the incorporation of additional guidance for prior lawful approval in Order No. R9-2013-0001 during the MS4 permit reissuance proceedings for the Riverside County Copermittees. This Order amends Order No. R9-2013-0001 to incorporate additional clarification describing when the structural BMP performance requirements are applicable to Priority Development Projects.
- 14. Los Peñasquitos Lagoon Sediment TMDL.** During the proceedings for Order No. R9-2015-0001, amending Order No. R9-2013-0001 to extend coverage of the Regional MS4 Permit to the Orange County Copermittees, the San Diego County Copermittees responsible for implementing the TMDLs for Sediment in Los

Peñasquitos Lagoon requested several minor revisions to make the TMDL requirements consistent with the Basin Plan amendment adopted by the San Diego Water Board. This Order amends Attachment E to Order No. R9-2013-0001 to incorporate minor revisions to the Los Peñasquitos Lagoon Sediment TMDL to make the requirements consistent with the adopted Basin Plan amendment.

15. Compliance Dates for TMDLs Beaches and Creeks Indicator Bacteria TMDLs.

A review of the interim and final compliance dates for the Revised TMDLs for Indicator Bacteria, Project I – Beaches and Creeks (Beaches and Creeks Indicator Bacteria TMDLs) in the San Diego Region in Attachment E to the Order revealed an inconsistency with the adopted Basin Plan amendment. This Order amends Attachment E to Order No. R9-2013-0001 to incorporate minor revisions to the Beaches and Creeks Indicator Bacteria TMDLs to make the requirements consistent with the adopted Basin Plan amendment.

16. Removal of Application for Early Coverage Provisions. Order No. R9-2013-0001, as amended by Order No. R9-2015-0001 included several provisions that allowed the Riverside County Copermittees to apply for early coverage under the Regional MS4 Permit prior to the expiration of Order No. R9-2010-0016. These provisions are no longer necessary once the Riverside County Copermittees are covered by the requirements of the Regional MS4 Permit with the adoption of this Order. This Order amends Order No. R9-2013-0001 to remove provisions related to applying for early coverage under the Regional MS4 Permit.

ADMINISTRATIVE FINDINGS

17. California Environmental Quality Act. This action is exempt from the requirement of preparation of environmental documents under the California Environmental Quality Act [Public Resources Code, Division 13, Chapter 3, Section 21000 et seq.] in accordance with California Water Code section 13389.

18. Public Notice. In accordance with State and federal laws and regulations, the San Diego Water Board has notified San Diego County, Orange County and Riverside County Copermittees, and all known interested agencies and persons of its intent to adopt this Order and has provided them with an opportunity to submit their written comments.

19. Public Hearing. The San Diego Water Board held a public hearing on November 18, 2015 and heard and considered all comments pertaining to the adoption of this Order.

20. Notification. Any person aggrieved by this action of the San Diego Water Board may petition the State Water Board to review the action in accordance with California Water Code section 13320 and California Code of Regulations, title 23, sections 2050 et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the adoption date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED,

1. This Order amends Order No. R9-2013-0001 and Fact Sheet as amended by Order No. R9-2015-0001 (Regional MS4 Permit and Fact Sheet). The revisions to the Regional MS4 Permit and Fact Sheet are shown Attachments 1 and 2 to this Order. Added text to the Regional MS4 Permit and Fact Sheet is displayed in **blue-underline** text and deleted text is displayed as **red-strikeout** text.
2. The amended Regional MS4 Permit and Fact Sheet included as Attachments 1 and 2 to this Order shall become effective on January 7, 2016.
3. The amended Regional MS4 Permit and Fact Sheet included as Attachments 1 and 2 to this Order shall supersede Order No. R9-2010-0016 for the Riverside County Copermittees except for enforcement purposes.
4. San Diego Water Board staff is directed to prepare and post a conformed copy of the Regional MS4 Permit and Fact Sheet, as amended by this Order, incorporating the revisions made by this Order.

I, David W. Gibson, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on November 18, 2015.

TENTATIVE

David W. Gibson
Executive Officer